

# Alberta Government must decide on the future of Oil Sands project

February 28, 2020

On February 18, 2020, the Alberta Court of Queen's Bench granted an injunction compelling the Alberta Government 10 days to decide whether to approve Prosper Petroleum Ltd.'s Rigel Oil Sands Project (the Project). Alberta appealed the decision and on February 26 successfully brought an application stay the order until an appeal can be heard. The Court of Appeal will hear the appeal April 27, 2020.

The Project is a proposed Steam-Assisted Gravity Drainage extraction facility in the Athabasca Oil Sands region, with a designed capacity to produce up to 10,000 bbl/d of bitumen. The Project proponent, Prosper Petroleum Ltd. (Prosper) initiated the regulatory approval process in 2013 and the Alberta Energy Regulator granted its approval in June of 2018. Since then, successive provincial governments have failed to render a final decision on the Project. As a result, Prosper claimed that it has undergone a period of financial uncertainty and difficulty that included worker layoffs and reduced wages and work hours.

In its decision, the Court described the delay as “abusive” and confirmed that the Provincial government has a duty under the Oil Sands Conservation Act, RSA 2000 c O-7 to study project proposals and issue decisions within a reasonable timeframe. The Court ultimately held that the Alberta government breached this duty by delaying its decision on the Project for an unreasonable 19 months. By comparison, the Court noted that the longest previous decision delay on record had been seven months. Justice Romaine observed:

**“The Crown has refused to give specific reasons for the lengthy delay, citing cabinet confidentiality. It submits that I must assume that cabinet is acting in the public interest with no evidence to support that assumption.”**

Issuing the mandatory injunction, Justice Romaine concluded, “there is a strong public interest in encouraging a timely cabinet decision. The balance of convenience supports an injunction”.

If upheld on appeal, this decision reinforces project proponents' rights to obtain finality in regulatory decisions within reasonable timelines and confirms the availability of injunctive relief when governments fail to make decisions in a timely matter. This order,

of course, does not guarantee a positive decision in favour of the Project, and the Alberta government has indicated, through its appeal and stay application, which it is prepared to challenge the order.

[Samer Chomery](#), Articling Student's assistance was greatly appreciated.

By

[Matti Lemmens](#), [Brett Carlson](#), [Samer Chomery](#)

Expertise

[Environmental](#), [Energy - Oil & Gas](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.